

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

C D & R OIL, INC.
dba Tracy Truck & Auto Stop
3940 N. Tracy Boulevard
Tracy, CA 95304

Employer

Docket Nos. 04-R2D4-9025
and 9026

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by C D & R Oil, Inc., dba Tracy Truck & Auto Stop (Employer).

JURISDICTION

Between July 19, 2002 and August 2, 2002, a representative of the Division of Occupational Safety and Health (the Division) conducted an investigation at a place of employment maintained by Employer at 3940 N. Tracy Boulevard, Tracy, California.

On January 3, 2003, the Division issued two citations to Employer, one alleging a general violation of section 5194(h) [training on hazardous chemicals]; and one alleging a serious violation of section 5162(a) [eye wash and deluge shower] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹ The Division proposed civil penalties totaling \$2,250 for the alleged violations.

Employer did not file an appeal with the Board until July 18, 2003, 155 days past the deadline to appeal.

On October 10, 2003, Employer was sent a letter from the Board asking it to explain any good reason for the late filed appeal.

On October 24, 2003, Employer wrote a letter to the Board which stated in relevant part that [it did] “not recall seeing or reading the page that says “an

¹ Unless otherwise specified all section references are to Title 8, California Code of Regulations.

employer has 15 working days from receipt of citation to file an appeal with the Appeals Board.”

On March 5, 2004, the Board issued an “Order Denying Late Appeal” on the ground that good cause for a late filing of 155 days did not exist.

On April 5, 2004, Employer filed a petition for reconsideration. The Division filed an opposition to the petition on April 26, 2004.

ISSUE

Has Employer established good cause for filing a late appeal?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6319 states that an “employer has 15 working days from receipt of the notice [of citation] within which to notify the appeals board that he or she wishes to contest the citation or order....”

Title 8, California Code of Regulations, section 359 states:

- (a) Except as provided in Section 361.1(b), an appeal shall be deemed filed on the date a communication indicating a desire to appeal the Division action is hand delivered, mailed to, or received by the Appeals Board in Sacramento, California, whichever is earlier. No particular format is necessary to institute the appeal.
- (b) The time for filing any appeal may be extended or a late filing permitted upon a written showing of good cause that contains sufficient facts to show or establish a reasonable basis for the late filing.
- (c) A request to file a late appeal shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.

Section 359.1 states:

- (a) A completed appeal form shall be filed for each contested Division action.
- (b) If an appeal is initiated by other than an appeal form, a completed appeal form shall be filed with the Appeals Board within 10 days of acknowledgement by the Appeals Board of the desire to appeal. Failure to file a completed appeal form may result in dismissal of the appeal.
- (c) The Appeals Board shall furnish appeal forms upon request and shall provide them to the district offices of the Division.

- (d) Upon receipt of a timely completed appeal form, the Appeals Board shall assign a docket number and deliver or mail a copy of the docketed appeal to each party.

In this case, Employer filed its appeal on July 18, 2002. The Board finds that Employer's appeal was filed 155 days late and that good cause does not exist for the late filing.

Prompt resolution of citations is imperative to insure that both sides to an appeal have an opportunity to fully present their case. The Board held in *Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001) at p. 3, that, "... appeals to the Board should be pursued by the appealing party with the degree of care a reasonably prudent person would undertake in dealing with his or her most important legal affairs. It is incumbent upon an appealing party to become familiar with the appeal process and requirements in order to further its interests in an orderly disposition of the appeal by the Board, affording due process to all of the parties, and avoiding undue prejudice to the Division and any third party to the appeal."

The Board finds that Employer did not act with the degree of care required pursuant to the findings in *Timothy J. Kock, supra*, in pursuing its appeal in this case.

The Board's independent review of the relevant records and citations shows that Employer was properly served with the citations on January 3, 2003, they received them by January 7, 2003, and the citations clearly state that "you only have 15 working days from receipt of a citation to appeal" and provide an employer's appeal rights, including a description of the procedure for appealing the citations.

DECISION

The Board affirms its Order Denying Late Appeal issued March 5, 2004.

MARCY V. SAUNDERS, Member
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: May 26, 2004